



Department of Justice

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JUSTICE DEPARTMENT AND FEDERAL TRADE COMMISSION URGE VIRGINIA BAR TO ALLOW NON-LAWYERS TO PARTICIPATE IN REAL ESTATE CLOSINGS

Bar Opinion would Eliminate Consumer Choice, Increase Prices

WASHINGTON, D.C. -- The Department of Justice and Federal Trade Commission today issued a joint letter urging the Virginia State Bar to reject a proposed opinion from bar members that would prevent non-lawyers from competing with attorneys to perform real estate closings.

The Department and the FTC said that the opinion will likely result in higher real estate closing costs and fewer choices for consumers.

"Without competition for these services, Virginians are likely to see their real estate closing costs go up," said Anne K. Bingaman, Assistant Attorney General in charge of the Justice Department's Antitrust Division. "Consumers should be able to pick the service that's right for them. It's difficult enough trying to buy a home, let's not make it even more costly or difficult for those trying to grab a piece of the American dream."

The proposed opinion would require consumers to use a lawyer for settlement when they buy and sell property, and when they refinance their mortgages or obtain a home equity loan.

Currently, Virginians can use a non-lawyer settlement service, such as a bank, title company, or builder. A number of banks provide closing services for refinancings and home equity loans for free.

As stated in their joint letter, the Department and the FTC said that the opinion has the potential to increase prices in two ways.

First, the opinion will force consumers who would not hire a lawyer to do so. Second, without competition from non-lawyer settlement services, the prices that lawyers charge will likely go up--resulting in higher costs for consumers.

In the early 1980s, private bar associations tried to stop competition from non-lawyer services in real estate closings and trust and estate services. The Justice Department sued these associations for violating the antitrust laws and obtained court orders prohibiting the illegal conduct.

For 15 years, consumers have had a favorable experience with choosing between non-attorney services and attorneys in Virginia, the Justice Department and FTC said. The agencies said that legal questions may be much less likely to arise because standardized forms are used for mortgages. Also, legal questions are particularly less likely to arise when home equity loans and refinancings are involved since consumers have already gone through the closing process once.

The Department said that consumers in much of the country can choose between lawyers and non-lawyer services. Just last year, the New Jersey Supreme Court rejected an opinion that would have required lawyer closings.

Uninformed consumers can be protected by measures far less anticompetitive than an outright ban on non-lawyer closings, the antitrust agencies wrote. For example, the New Jersey court required written notice of the risks involved in closing without a lawyer.

Although the Virginia bar's proposed opinion would allow attorneys to delegate tasks to non-lawyers, an attorney would still be required to actively oversee the settlement.

The opinion, proposed by the Virginia State Bar's Standing Committee on the Unauthorized Practice of Law, must be approved by the council of the bar and the Virginia Supreme Court to be binding. The opinion would declare non-lawyer closings to be illegal.

Approval by the Virginia Supreme Court would likely protect the rule from a later challenge by federal antitrust agencies. This is why the agencies chose to express their concerns through the attached letter.

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